

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Amendment to Commission Technology Law &) RM-11750
Rules Concerning Adjudication Policy Clinic)
(TLPC) of Spectrum Interference Disputes)

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”)^{1/} pursuant to the June 11, 2015, Public Notice (“*Public Notice*”) issued by the Consumer and Governmental Affairs Bureau (“Bureau”),^{2/} hereby submits these reply comments in response to the Petition for Rulemaking (“Petition”) filed by Samuelson-Glushko Technology Law & Policy Clinic and J. Pierre de Vries (collectively, the “Petitioners”) in the above-referenced proceeding.^{3/} The Petitioners urge the FCC to initiate a proceeding to adopt an adjudication process – known as an Administrative Law Judge or “ALJ” option – for spectrum interference disputes.^{4/} T-Mobile recognizes and appreciates the importance of timely resolution of spectrum interference disputes and the Petitioners’ well-intentioned proposal to facilitate resolution of disputes. However, the record demonstrates that the “ALJ Option” would, impose substantial burdens on the FCC and private parties without resulting in benefits beyond the FCC’s current interference dispute resolution rules. It would also remove interference resolution matters from experts in the Commission’s operating bureaus,

^{1/} T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

^{2/} See *Amendment to Commission Technology Law & Rules Concerning Adjudication Policy Clinic (TLPC) of Spectrum Interference Disputes*, Public Notice, RM-11750, Report No. 3023 (rel. June 11, 2015).

^{3/} See Petition for Rulemaking: Spectrum Interference Dispute Resolution of Samuelson-Glushko Technology Law & Policy Clinic (TLPC) and J. Pierre de Vries, RM-11750 (filed May 28, 2015) (“Petition”).

^{4/} See *id.* at 1.

separating policymakers from real-world experience. Rather than adopt the ALJ Option, the FCC should strive to improve its existing complaint procedures by devoting additional resources to the entities responsible for resolving complaints and strengthening its rules governing the dispute resolution process.

I. REPLY COMMENTS

The ALJ Option proposed by the Petitioners would allow a private party to file a spectrum interference complaint directly with the Office of Administrative Law Judges (“ALJ Office”) instead of filing a complaint with the FCC’s Enforcement Bureau.^{5/} The Petitioners also urge the FCC to adopt rules that set deadlines throughout the interference dispute adjudication process and to allocate sufficient staff and resources to the ALJ Office to ensure that decisions are effective and issued in a timely manner.^{6/} Commenters, however, widely agree that the Petitioners’ proposals are not the best approach to improving spectrum interference dispute resolution for the following reasons.^{7/}

A. The ALJ Option Would Impose Substantial Burdens on the Commission.

Contrary to the Petitioners’ claims,^{8/} the ALJ Option would be burdensome for the Commission to adopt and implement. The Commission would be required to adopt complex new rules that would not only ensure fair and timely resolution of disputes, but would also need

^{5/} See *id.* at 10-11.

^{6/} See *id.* at 15-18.

^{7/} See, e.g., Comments of Lockheed Martin Corporation, RM-11750, at 2 (filed July 13, 2015) (“Lockheed Comments”); Comments of AT&T, RM-11750, at 2-3 (filed July 13, 2015) (“AT&T Comments”); Comments of the Enterprise Wireless Alliance, RM-11750, at 2 (filed July 13, 2015) (“EWA Comments”); Comments of the National Public Safety Telecommunications Council, RM-11750, at 1 (filed July 13, 2015) (“NPSTC Comments”); Response of the Telecommunications Industry Association, RM-11750, at 1-3 (filed July 13, 2015) (“TIA Comments”).

^{8/} See Petition at 10 (“The Commission would only need to create a new rule to allow a party to bring a case directly to the ALJ, but the Commission would not need to create a new set of rules to govern adjudication as these rules already exist.”).

to be robust enough to withstand potential abuse. For instance, as the Petitioners themselves recognize, the ALJ Option rules would need to protect against the filing of frivolous claims as well as instances of efficient breach, where one party to a spectrum interference dispute voluntarily chooses not to fix the interference problem – *i.e.*, “breaches” – because it is economically better for that party to pay fines rather than resolve the issue.^{9/} This complicated rulemaking process alone would heavily tax FCC staff resources.

Even after the rules are implemented, the FCC’s burdens would continue. As the Petitioners note, if the Commission disagrees with an ALJ’s decision, it has the option to review the record and overrule the decision.^{10/} This could potentially result in multiple reviews of disputes, which, in turn, could create delays in final resolution – the very opposite effect of what the proposal intends.

Moreover, implementing the ALJ Option rules would require the FCC to ensure that the ALJ Office has sufficient support staff as well as technical experts. Specifically, because there is currently only one ALJ in the ALJ Office,^{11/} the FCC would be compelled to hire numerous ALJs and staff to address what could be a large volume of complaints under the new option. As commenters recognize, this effort would require substantial FCC resources that simply do not exist today.^{12/} The Petitioners themselves recognize that the FCC currently has limited means to

^{9/} See *id.* at 14-15.

^{10/} See *id.* at 13.

^{11/} See FCC, Office of Administrative Law Judges Staff, <https://www.fcc.gov/encyclopedia/office-administrative-law-judges-staff> (last visited July 23, 2015).

^{12/} See, *e.g.*, Lockheed Comments at 4 (explaining that the Commission has limited technical and monetary resources and that the adjudicative process proposed by the Petitioners would inevitably divert personnel and funds from the FCC’s Bureaus and Offices, resulting in delays in already lengthy and technically-intensive proceedings); NPSTC Comments at 6 (stating that “[u]nless the overall Commission budget is increased, [the ‘ALJ Option’] could . . . reduce funds for technical resources in the Commission even further”); Comments of the Satellite Industry Association, RM-11750, at 2 (filed July 13, 2015) (“SIA Comments”) (observing that that “the proposed additional measures are unproven, and would

resolve interference disputes.^{13/} Indeed, budgetary constraints were the primary driving force behind the FCC’s recent decision to close several of the Enforcement Bureau’s Field Offices that it utilizes to resolve spectrum interference issues.^{14/} Requiring the FCC to establish an ALJ Option would unnecessarily drain resources that are already stretched and may become even more so.^{15/}

To help ease the FCC’s burdens, the Petitioners suggest temporarily shifting resources from the FCC’s Wireless Telecommunications Bureau, Enforcement Bureau, or Office of Engineering and Technology to the ALJ Office.^{16/} However, this proposal would only divert important staff resources and funds from the FCC’s Bureaus and Offices already dedicated to addressing and resolving interference concerns at the rulemaking level. As Lockheed Martin Corporation suggests, this diversion could harm the public interest in “ways much more severe than any number of individual interference cases ever could.”^{17/}

impose significant costs and resource burdens on Commission personnel and licensees, far outweighing any possible benefits”).

^{13/} See Petition at 2.

^{14/} See *Reorganization of the Enforcement Bureau’s Field Operations*, Order, FCC 15-81, ¶ 1 (rel. July 16, 2015) (“*Field Offices Order*”); see also Letter from Tom Wheeler, Chairman, FCC, to the Honorable Jeff Merkley, U.S. Senate, at 1 (dated May 29, 2015) (“Merkley Letter”), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-333791A1.pdf.

^{15/} See Jeff Hawn, *Congress Cuts FCC Budget, Puts Brakes on Net Neutrality*, RCR WIRELESS NEWS (June 12, 2015), available at <http://www.rcrwireless.com/20150612/policy/fcc-budget-impacts-net-neutrality> (reporting that “[t]he proposed federal budget recently released by the U.S. House of Representatives cuts Federal Communications Commission funding”, providing it with “\$315 million in funding, \$73 million below what the agency requested for the upcoming fiscal year”); Karl Bode, *House Tries to Gut FCC Funding, Neutrality Rules*, DSL REPORTS (June 11, 2015), available at <http://www.dslreports.com/shownews/House-Tries-To-Gut-FCC-Funding-Neutrality-Rules-134114> (stating that “language buried in the Fiscal Year 2016 Financial Services Bill . . . dramatically strips FCC funding . . .”).

^{16/} See Petition at 17.

^{17/} Lockheed Comments at 4.

B. The ALJ Option Would Be Costly and Time-Consuming for the Parties.

The Petitioners suggest that the ALJ Option will benefit private parties, particularly new entrants and smaller entities, because ALJ decisions and adjudication records will streamline the dispute resolution process as well as establish precedent that creates the certainty companies need to invest and innovate.^{18/} The Petitioners' predictions are unrealistic. To the contrary, the ALJ Option would likely harm private parties, particularly smaller businesses, because it would force them to incur substantial costs such as hiring attorneys, consultants, and other staff to engage in the complex ALJ process. As several commenters recognize, these costs might otherwise be better spent on actually resolving the interference.^{19/} The ALJ Option would also require private parties to undergo the highly time-consuming and resource-intensive task of engaging in the discovery process, which alone can take several months. Moreover, it would require numerous parties to routinely monitor FCC interference proceedings to determine their compliance obligations rather than rely principally on FCC rules – a complicated task particularly for those entities not accustomed to continuously monitoring FCC proceedings.^{20/}

C. The ALJ Option Would Complicate a Party's Status Under the FCC's Rules.

The Petitioners suggest that claims of interference could be brought against a wide array of “defendants,” including licensed and unlicensed operators, operators of incidental radiators,

^{18/} See Petition at 12.

^{19/} See, e.g., NPSTC Comments at 6 (“NPSTC believes the petitioner’s proposal would also cause parties to incur unnecessary legal costs that might otherwise be better spent on actually resolving the interference.”); Lockheed Comments at 4 (pointing out that licensees and spectrum users “could be forced to commit their own personnel and resources to the process, or to pay more for products and services subject to the adjudication procedure”); see also SIA Comments at 2.

^{20/} See TIA Comments at 4 (“Small ICT manufacturers seeking to deploy an innovative new product would need to consult an ever-evolving body of ALJ precedential decisions – and potentially hire more attorneys – rather than having their engineers simply consult the text of the Commission’s published rules.”).

and equipment manufacturers, distributors, and vendors.^{21/} They also recommend that licensees, unlicensed operators “who believe they have rights to protection against harmful interference,” and representative groups such as trade associations be eligible to file claims.^{22/}

The Petitioners’ proposals would unfairly mean that *any* entity could be targeted as a “defendant,” even if it has no real relationship to the offending behavior. For instance, an equipment manufacturer could be named as a “defendant” even if its equipment was manufactured in accordance with FCC regulations simply because the operator of that equipment caused interference. As the National Public Safety Telecommunications Council notes, the Petitioners’ proposals could also result in public safety entities, among others, being involuntarily declared as “defendants,” unnecessarily burdening them – and ultimately taxpayers.^{23/} In addition to casting a wide net over potential “defendants,” the Petitioners’ proposals would potentially provide unlicensed users and others with interference protection rights not otherwise contemplated under the rules by allowing them to be deemed “plaintiffs” to a dispute.^{24/}

D. The ALJ Option Would Not Result in Any Public Interest Benefits Beyond the FCC’s Existing Requirements.

The Petitioners contend that the FCC’s existing rules governing spectrum interference disputes are ineffective because “an operator that brings a claim asserting that another operator is

^{21/} See Petition at 10.

^{22/} See *id.*

^{23/} See NPSTC Comments at 5.

^{24/} See, e.g., Lockheed Comments at 3-4 (“Under no circumstances should the proposed ‘ALJ rule’ or any other new or changed process afford new rights (including the ability to continue operating pending adjudication) to such spectrum users.”); TIA Comments at 4 (asserting that the Petitioner’s proposal “fails to square with Part 15’s admonition that unlicensed devices cannot cause harmful interference and must accept all harmful interference” and that “under no circumstances should any potential new or modified process accord spectrum users any greater rights than they currently enjoy”).

causing harmful interference cannot be certain whether, when, or how its claim will be resolved.”^{25/} The Petitioners claim that the current processes are not fact-based, transparent or timely because the Enforcement Bureau may take into account other FCC activities related to a dispute, including, for example, using the complaint proceeding as leverage to extract merger conditions or delaying resolution of a complaint pending FCC rule changes.^{26/} They argue that this can result in disputes remaining unresolved indefinitely.^{27/}

As an initial matter, most interference issues are prevented by the FCC’s services rules. As the Telecommunications Industry Association explained, “the Commission’s *ex ante* rules are crafted to manage situations of potential interference so that such scenarios do not arise. And when complaints do arise, it is most often because *something* is occurring at odds with the Commission’s rules.”^{28/}

To the extent interference occurs despite the FCC’s service rules, the FCC’s existing interference complaint procedures have been and will continue to be effective in resolving disputes. While those rules do not prescribe rigid requirements for the resolution of complaints, commenting parties widely agree that this flexibility often enables parties to resolve their disputes collaboratively without FCC intervention.^{29/}

^{25/} Petition at i.

^{26/} *See id.* at 5.

^{27/} *See id.* at 6.

^{28/} TIA Comments at 2; *see also* Lockheed Comments at 2 (“The most serious threats of harmful interference have been, and continue to be, addressed at the level of proposals for spectrum allocations/reallocations and overall service rules.”).

^{29/} *See, e.g.,* Lockheed Comments at 2-3; TIA Comments at 2; Comments of ITIF, RM-11750, at 2 (filed July 14, 2015).

If FCC intervention is required, the FCC’s Enforcement Bureau is responsible for resolving complaints.^{30/} The rules allow the Enforcement Bureau to rely on Field Offices and their Agents to conduct on-site investigations of complaints and assist with resolution.^{31/} This expedites the resolution of disputes because Field Office Agents can be deployed quickly to identify sources of interference, assuming they exist. Even under the recent *Field Offices Order*, Field Office Agents can continue to facilitate more effective solutions to interference disputes because they, unlike ALJs, are technically sophisticated and trained to address complex interference problems.^{32/} In fact, the *Field Offices Order* now requires *all* Agents to have electrical engineering backgrounds.^{33/} The FCC will also more broadly embark on a program to update its equipment and employee skillset to address interference issues, which will further help resolve interference complaints.^{34/} As commenters note, resolving interference is largely a technical, rather than legal, matter better left to Field Offices.^{35/}

While the Petitioners express concern about the fact-based nature and transparency of the current dispute resolution processes, those concerns are unfounded. No party has found the

^{30/} See 47 U.S.C. § 0.111(a)(4).

^{31/} See FCC, EB – Field Activity and Actions, <http://transition.fcc.gov/eb/rfo/ActAct.html> (last visited July 24, 2015) (“The Enforcement Bureau’s Regional and Field Offices are responsible for handling a variety of on-scene investigations and inspections in response to complaints and in support of the Commission’s operations.”).

^{32/} See Comments of AT&T, RM-11750, at 3 (filed July 13, 2015) (“AT&T Comments”) (“Field Office Agents bring real-world experience and before escalation is warranted quickly engage the parties, assess the interference environment, determine the cause of the interference, and develop prospects for resolving the interference.”); see also TIA Comments at 1-2.

^{33/} See *Field Offices Order* ¶ 6.

^{34/} See *id.* ¶ 4.

^{35/} See, e.g., NPSTC Comments at 1 (arguing that “[t]he proposal seems to ignore the fact that actually resolving interference is largely a technical matter”); EWA Comments at 2 (cautioning that the ALJ Office may not be the appropriate entity to address interference disputes because the resolution of such disputes “tends to be heavily dependent on evaluating competing technical claims rather than assessing legal rights”).

current dispute resolution processes to be not fact-based or transparent. Similarly, no party in this proceeding has expressed any concern about the Enforcement Bureau's alleged attempt to tie interference issues to other FCC proceedings. To the contrary, at least one commenting party has found that "Enforcement Bureau Field Offices do, in fact, handle spectrum interference complaints in a fact-based, transparent, and timely manner, using facts derived from field investigations, regularly communicating results of the investigation to the disputing parties, and making timely decisions."^{36/}

T-Mobile agrees that interference disputes could be more timely resolved. However, it is encouraged by Chairman Wheeler's recent commitment to make interference complaints the Field Offices' top priority, even in a diminished capacity.^{37/} In any case, to the extent the FCC seeks to improve its interference dispute resolution processes, it should seek to strengthen and commit additional resources to its existing processes – *i.e.*, the Enforcement Bureau and its Field Offices (including restoring reductions made in the *Field Offices Order*) – rather than create a new and more complicated ALJ Option.^{38/}

^{36/} AT&T Comments at 3.

^{37/} See Merkley Letter at 1 ("Our employees and stakeholders agree that radiofrequency interference complaints should be the field offices' top priority.").

^{38/} See AT&T Comments at 2, 4-7.

II. CONCLUSION

T-Mobile recognizes the utility of the FCC addressing the spectrum interference dispute issues raised in this proceeding and supports these important efforts. Expediting dispute resolution processes ensures the efficient operation of the wireless ecosystem as a whole. T-Mobile, however, urges the Commission to proceed carefully and to reject the Petitioners' proposal to create a dispute resolution regime that is both burdensome and unnecessary. The better approach would be for the FCC to focus its limited resources on improving existing spectrum interference complaint procedures.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Angela Y. Kung, do hereby certify that on this 28th day of July, 2015, I caused a copy of the foregoing Reply Comments of T-Mobile USA, Inc., to be served via electronic mail,^{39/} on the following:

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^{39/} See 47 C.F.R. §§ 1.47(d), 1.405; Blanket Consent to and Request for Consent to Electronic Service of the Samuelson-Glushko Technology Law & Policy Clinic and J. Pierre de Vries, RM-11750, at 1 (filed June 24, 2015) (consenting to electronic service via e-mail).